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May 11, 2000

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MAY 11 2000

BY HAND DELIVERY

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: MM Docket No. 98-198
Cross Plains, Texas, et al.

Dear Ms. Salas:

Transmitted herewith, on behalf of Jayson D. Fritz and Janice M. Fritz, are an original and four copies of their "Petition for Partial Reconsideration" in the above-referenced proceeding.

Should any further information be required concerning this matter, please communicate with this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Anne Goodwin Crump
Counsel for Jayson D. Fritz and Janice M. Fritz

AGC:mah
Enclosures

cc: Mr. Robert Hayne, FCC (with enclosure)

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ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-198
Table of Allotments, FM Broadcast Stations.)	RM-9304
(Cross Plains, Allen, Benbrook, Brownwood,)	RM-9492
Burkburnett, Campbell, Clifton, Coleman,)	RM-9548
Commerce, Detroit, Graham, Granbury, Haskell,)	RM-9547
Kerens, Mason, Jacksboro, McKinney, Muenster,)	
San Saba, Snyder, Terrell, Vernon, Waco, and)	
Wichita Falls, Texas; Alva, Anadarko, Ardmore,)	
Atoka, Comanche, Dickson, Duncan, Durant,)	
Eldorado, Hugo, and Lone Grove, Oklahoma))	

Directed to: Chief, Allocations Branch

PETITION FOR PARTIAL RECONSIDERATION

Jayson D. Fritz and Janice M. Fritz (the "Fritzes"), by their attorneys, hereby respectfully submit their Petition for Partial Reconsideration of the "*Report and Order*," DA 00-584, released March 21, 2000 ("*R&O*"), in the above-captioned proceeding, with regard to the treatment of the Comments and Counterproposal of Rawhide Radio, L.L.C. ("Rawhide"), successor-in-interest to Sonoma Media Corporation ("Sonoma"). With respect thereto, the following is stated:

1. In the *R&O* and subsequent *Erratum*, released April 3, 2000, instead of acting on the Rawhide counterproposal, the Commission stated that it would consider that counterproposal in a separate proceeding.¹ Such treatment is entirely inappropriate, however. Previously, the Fritzes had submitted pleadings in the instant proceeding in which they had demonstrated that the Rawhide (then Sonoma) counterproposal should be dismissed. The Commission's staff, however, failed to address and consider, or even mention, the arguments which had been timely raised in this regard. The Commission is not, however, permitted simply to ignore arguments and issues brought before it. Accordingly, at this time, the Fritzes are seeking reconsideration of that portion of the *R&O* dealing with the Rawhide counterproposal and requests that this counterproposal be dismissed without further consideration in either this or any other docket.

2. As background, on December 21, 1998, Sonoma and Gulfwest Broadcasting Company, the predecessor licensee of KVCQ(FM), Cuero, Texas, submitted their "Comments and Counterproposal" in the above-captioned proceeding.² In that pleading, Sonoma sought to upgrade and relocate KVCQ(FM). This proposal entailed a number of changes in channel for other allotments and facilities, including a substitution of Channel 282C2 for Channel 249C2 at Mason, Texas. The Fritzes currently have pending an application for construction permit for a new FM broadcast station to operate on Channel 249C2 at Mason, File No. BPH-960826MS. Clearly,

¹ It should be noted, however, that contrary to the statement in the *Erratum*, Rawhide did not modify its Cuero proposal to specify McQueeney, but rather it filed an entirely new proposal in an entirely separate proceeding during the pendency of the instant proceeding.

² Since that time, the license for KVCQ(FM) has been assigned from Gulfwest Broadcasting Company to Sonoma, and then to Rawhide so that Rawhide is the successor proponent of the counterproposal.

therefore, the Fritzes have an interest in the outcome of the instant proceeding. In addition, two other applicants, Foxcom, Inc. and BK Radio, have pending applications mutually exclusive with that of the Fritzes (File Nos. BPH-960826MH and BPH-960823MF, respectively).³

3. On July 21, 1999, the Commission issued a Public Notice, Report No. 2346, in which it sought comment on the Sonoma counterproposal, among others, in the instant proceeding. That notice provided fifteen days, through August 5, 1999, in which to submit such comments. On August 3, 1999, Sonoma submitted its "Motion to Withdraw and Dismiss Counterproposal."

4. In Sonoma's Motion, it unequivocally expressed its request that its "Motion be granted and its Counterproposal in this Docket withdrawn and dismissed." "Motion to Withdraw and Dismiss Counterproposal" at 3. Furthermore, attached to the Motion was a Declaration, under penalty of perjury, executed by Roy E. Henderson, President and sole shareholder of Sonoma. That Declaration equally unequivocally stated: "Sonoma Media Corporation hereby moves to withdraw and dismiss its above-referenced Counterproposal in Docket 98-198." In neither the Motion nor the Declaration is there any reference to withdrawal of only a portion of the Counterproposal. The statements in both documents quite clearly request the dismissal of the entire Counterproposal.

³ It should be noted that, in a separate proceeding, the Commission has proposed to eliminate the mutual exclusivity through the allotment of additional channels to Mason. See *Notice of Proposed Rule Making* in MM Docket 99-215, DA 99-1142, released June 11, 1999. In that proceeding, at the request of BK Radio, the Commission has proposed to allot Channel 238C2 to Mason and has also noted the availability of Channel 273C2 for another of the applicants. In addition, Munbilla Broadcasting Corporation, which shares common ownership with Foxcom, has submitted a counterproposal in that proceeding in which it has proposed the substitution of Channel 273 C2 for Channel 249C2 at Mason and the allotment of Channel 249C2 at Fredericksburg, Texas.

Thus, as of the comment filing deadline of August 5, 1999, the Sonoma Counterproposal had been withdrawn.

5. Thereafter, on August 13, 1999, Sonoma untimely submitted its so-called “Erratum to ‘Motion to Withdraw and Dismiss Counterproposal’ to Withdraw and Modify to ‘Motion to Withdraw and Dismiss Part of Counterproposal.’” In that pleading, Sonoma stated that it actually wished to withdraw only the portion of its Counterproposal related to Cross Plains, Texas, and wished to continue to prosecute the remaining portions of its Counterproposal.

6. On August 26, 1999, the Fritzes submitted their “Comments in Opposition to the ‘Erratum to “Motion to Withdraw and Dismiss Counterproposal” to Withdraw and Modify to “Motion to Withdraw and Dismiss Part of Counterproposal.””” Therein, the Fritzes noted that Sonoma’s apparent change of heart, however, represented not simply an “Erratum” but a substantive change in Sonoma’s request. Moreover, this change was submitted some eight days after the deadline for submitting comments on the counterproposals in this proceeding. Such an about-face at that time represents a blatant abuse of the Commission’s processes and must be rejected. To do otherwise would create a precedent that should be unacceptable for the chaos it could create with the Commission’s processes.

7. It strains credulity to believe that the previous complete withdrawal of and request for dismissal of Sonoma’s entire counterproposal was, in fact, an error. As stated above, the original withdrawal motion stated quite clearly, and in no uncertain terms, Sonoma’s request for a dismissal of its entire Counterproposal. Furthermore, the Declaration executed by Mr. Henderson was equally clear and unequivocal. Presumably, Mr. Henderson read his Declaration before he signed it under penalty of perjury, and he would therefore be aware of its contents. Thus, both counsel for Sonoma

and its principal were entirely cognizant of the substance of the withdrawal and requested dismissal of the Counterproposal. Only some ten days later, and **eight days after the comment deadline**, did Sonoma apparently have a change of heart and reverse its course. Such games with the Commission's procedures cannot be countenanced. Having timely withdrawn its Counterproposal, Sonoma should not be permitted untimely to reinstate it.

8. Furthermore, the consideration of the Sonoma-Rawhide counterproposal in MM Docket No. 99-342 could work to deprive the Fritzes of their procedural rights. The comment and reply comment deadlines in that proceeding have passed. Furthermore, because of Sonoma's procedural gamesmanship, the Fritzes' opportunity to file comments in the instant proceeding also was abridged. The Fritzes had learned of Sonoma's proposed withdrawal of their counterproposal, and a copy of its "Motion to Withdraw and Dismiss Counterproposal" was served on counsel for the Fritzes and received prior to the comment deadline of August 5, 1999. As this counterproposal was the only portion of the instant proceeding in which the Fritzes had any interest, they had no reason at that time to file comments and did not do so. Thus, the belated withdrawal does not represent a harmless error but has served to injure the interests of another party.

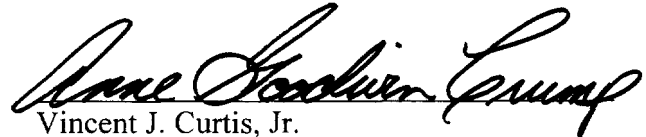
9. The question presented herein is a simple one. Namely, should a party be permitted first, to dismiss a proposal during the relevant filing period and, second, untimely to seek to reinstate that same proposal after the filing period has expired. Administrative orderliness dictates that no such procedures can be tolerated.

WHEREFORE, the premises considered, the Fritzes respectfully request that Rawhide's Counterproposal be dismissed in its entirety as requested by its predecessor-in-interest Sonoma during the comment period.

Respectfully submitted,

JAYSON D. FRITZ AND JANICE M. FRITZ

By:

A handwritten signature in cursive script, appearing to read "Anne Goodwin Crump".

Vincent J. Curtis, Jr.

Anne Goodwin Crump

Their Attorneys

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May 11, 2000

CERTIFICATE OF SERVICE

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Petition for Partial Reconsideration" were sent this 11th day of May, 2000, by United States mail, postage prepaid, to the following:

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Watts Communications, Inc.
Radio Station KXYL
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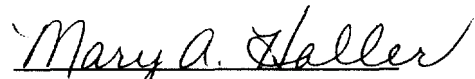
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